

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SCANSOFT, INC.

Plaintiff,

V.

Civil Action No. 04-10353 PBS

VOICE SIGNAL TECHNOLOGIES, INC.,
LAURENCE S. GILLICK, ROBERT S.
ROTH, JONATHAN P. YAMRON, and
MANFRED G. GRABHERR

Defendants.

**SCANSOFT, INC.'S MEMORANDUM IN SUPPORT OF ITS
MOTION TO COMPEL PRODUCTION OF MANFRED G. GRABHERR'S
EMPLOYMENT CONTRACT WITH H KURZWEIL**

On June 16, 2005, after six months of stonewalling, Voice Signal Technologies, Inc. (“VST”) finally produced defendant Manfred G. Grabherr for a deposition. During the deposition, Dr. Grabherr revealed that he worked for Kurzweil, a predecessor-in-interest to Lernout & Hauspie and hence to ScanSoft. Dr. Grabherr also testified that he signed an employment agreement with Kurzweil. ScanSoft immediately requested production of the employment agreement as responsive to ScanSoft’s written discovery requests to the defendants. ScanSoft followed up on its request by letter dated shortly thereafter. Consistent with its stonewalling approach to discovery, VST has not responded to ScanSoft’s requests. ScanSoft respectfully requests that this Court order defendants Grabherr and VST to produce that employment agreement to ScanSoft immediately and award ScanSoft the reasonable costs and attorney’s fees associated with this motion.

Defendant Grabherr's Refusal to Produce Documents

On June 16, 2005, after considerable stonewalling, VST produced defendant Manfred G. Grabherr for a deposition.¹ During his deposition, Dr. Grabherr admitted that he worked for and signed a written employment agreement with Kurzweil. Grabherr Tr. at 53-55 (**Exhibit A**). Two days after his employment with Kurzweil, Lernout & Hauspie ("L&H") acquired that company and Dr. Grabherr became employed by L&H under the terms of his agreement with Kurzweil. *Id.* When ScanSoft asked Dr. Grabherr if the employment agreement was in his possession, Dr. Grabherr admitted that he had not been asked to search for it. *Id.* at 56 (**Ex. A**). Counsel for Dr. Grabherr then represented that VST would "collect the document if it exists," and "if so, if it responds to any discovery in the case, then [defendants] will produce it." *Id.* at 56-57 (**Ex. A**).

The following day, ScanSoft sent counsel for the defendants a letter demanding production of the Kurzweil employment agreement pursuant to ScanSoft's Document Requests to VST and Dr. Grabherr. June 17, 2005 letter from Rebecca L. Hanovice to Paul D. Popeo (**Exhibit B**). In its correspondence, ScanSoft noted that Document Request to VST No. 32, and Document Request to Dr. Grabherr Nos. 10 and 13 each request production of the employment agreement. *See Ex. B* (Request No. 13, requesting production of "[e]ach document . . . in your possession at the time you became an employee of Voice Signal that was related to your employment at Lernout & Hauspie and/or your work on Speech Recognition Products at Lernout & Hauspie;" and Request Nos. 32 and 10, requesting production of "[e]ach document concerning

¹ For a detailed description of VST's obstruction of the Grabherr deposition, *see* ScanSoft's Motion to Compel Further Deposition of Manfred G. Grabherr and for Sanctions [DN 252], filed July 8, 2005.

trade secrets of ScanSoft (or its predecessors, including without limitation Dragon Systems and Lernout & Hauspie) that were in the possession of or known to [Laurence S. Gillick, Robert S. Roth, Jonathan P. Yamron, or Manfred G. Grabherr] at the time they became employees of Voice Signal.”)

Argument

ScanSoft is entitled to discovery of Dr. Grabherr’s employment agreement with Kurzweil as evidence that Kurzweil, like L&H and ScanSoft, took steps to protect proprietary trade secret information concerning speech recognition research and development. *J.T. Healy & Son, Inc. v. James A. Murphy & Son, Inc.*, 357 Mass. 728, 737-738 (1970) (“if the person entitled to a trade secret wishes to have its exclusive use in his own business, he must not fail to take all proper and reasonable steps to keep it secret”). ScanSoft is entitled to this evidence and the defendants should be compelled to produce the Kurzweil employment agreement.

Employment agreements, such as the one Dr. Grabherr signed with Kurzweil, may contain express provisions regarding an employee’s obligations concerning company confidential and trade secret information. Dr. Grabherr’s contractual obligation to maintain trade secrets learned during his employment with ScanSoft’s predecessor Kurzweil is directly relevant to ScanSoft’s trade secret misappropriation claims. As a result of the acquisition of Kurzweil by L&H, and the subsequent purchase of L&H speech recognition assets by ScanSoft, ScanSoft owns the speech recognition trade secrets developed by defendant Dr. Grabherr at Kurzweil and acquired by L&H. Further, Dr. Grabherr testified that his employment agreement with Kurzweil transferred to his new employer L&H, ScanSoft’s predecessor in interest of the speech recognition assets which are the subject of this litigation. Grabherr Tr. at 59-60 (**Ex. A**). Dr.

Grabherr's employment agreement thus is responsive to ScanSoft's discovery requests and should be produced forthwith.

CONCLUSION

For the foregoing reasons, ScanSoft respectfully requests that this Court compel VST to produce Dr. Grabherr's employment agreement with Kurzweil, and award ScanSoft the reasonable costs and attorneys fees associated with the preparation and filing of this motion.

Dated: July 15, 2005

SCANSOFT, INC.,
By its attorneys,

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